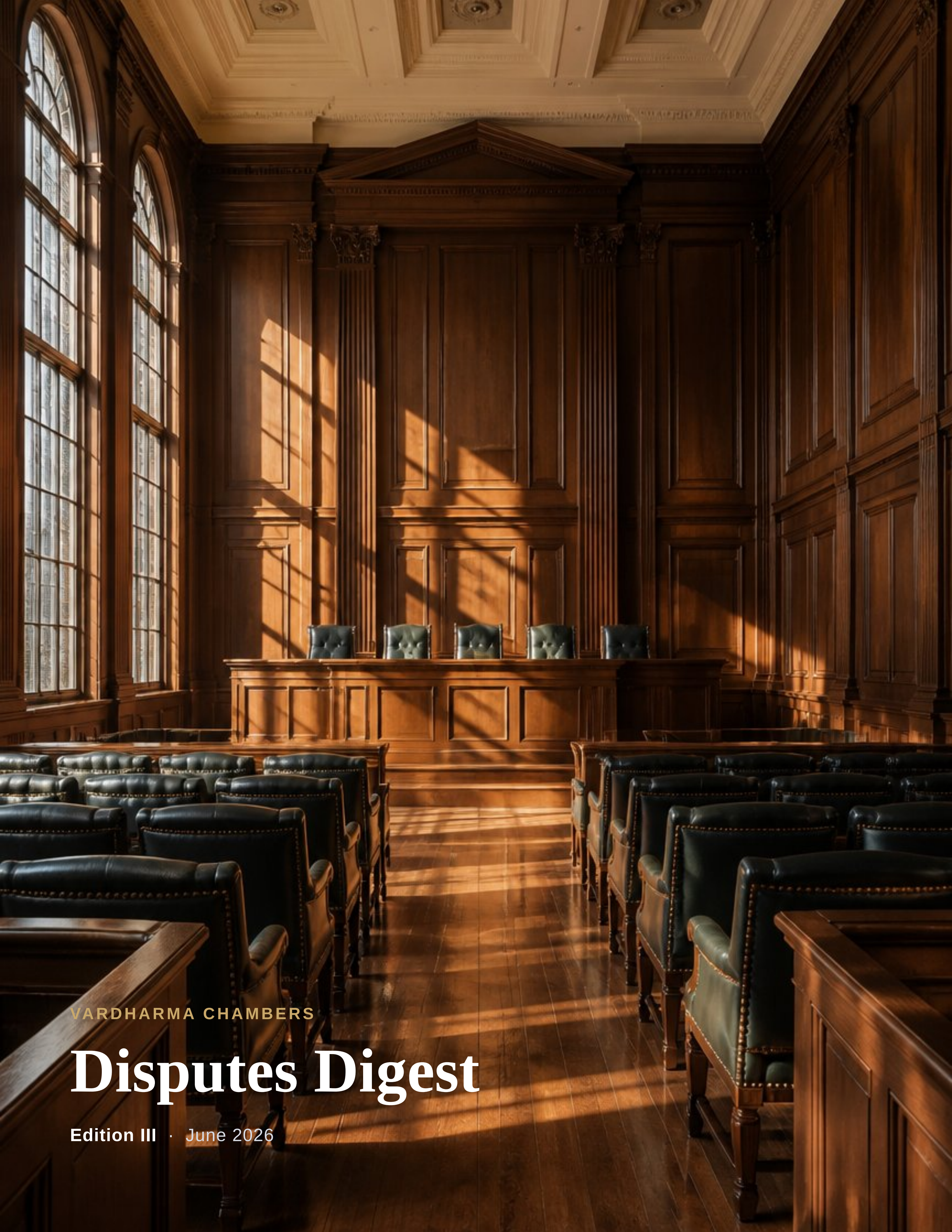

VARDHARMA CHAMBERS

Disputes Digest

Edition III · June 2026

This edition covers four judicial decisions and two legislative developments. The Supreme Court has settled a limitation question that has cost parties their right to challenge awards, and separately closed off mid-stream jurisdictional challenges. On the legislative front, the ICC 2026 Rules are now in force, and the Section 9 versus emergency arbitration gap remains unresolved.

JUDICIAL OVERVIEW

Judicial Developments Index: June 2026

Limitation for Section 34: Clock runs only after Section 33 proceedings are fully disposed of.

Section 16 Jurisdictional Rejections: Not interim awards; no intermediate challenge available.

Corporate Restructuring: Non-arbitrable; exclusive NCLT jurisdiction cannot be displaced by agreement.

Patent Illegality: Not available as a ground against international commercial arbitration awards.

LEGISLATIVE OVERVIEW

Legislative Developments Index: June 2026

ICC 2026 Rules in force from 1 June 2026: Terms of Reference removed, early determination mechanism introduced, ex parte EA orders now available.

Section 9 vs. Emergency Arbitration: A practitioner problem the Draft Bill has not fully solved.

SUPREME COURT

Limitation for a Section 34 Challenge Runs Only After Section 33 Proceedings Are Disposed Of

NHAI v. T. Younis & Anr. | 2026 INSC 616 | June 2026

The Supreme Court held that when parties invoke post-award proceedings before an Arbitral Tribunal seeking correction, interpretation, or an additional award under Section 33, the limitation period for challenging the award under Section 34(3) begins only after those proceedings are disposed of. The Court was unambiguous: parties cannot be compelled to challenge an award while such proceedings remain pending before the tribunal. The Karnataka High Court judgment, which had held that the 90-day clock ran from the date of the original award regardless, was set aside.

The statutory logic is clean. An award subject to pending Section 33 proceedings, whether for correction of a computation error, interpretation of an operative term, or an additional award on an omitted claim, has not settled into a final form. Section 34 exists to challenge a final award. Running the limitation from the date of an award that may still be corrected by the tribunal that made it is procedurally incoherent.

> **Key Takeaway: Where Section 33 proceedings have been invoked, do not begin counting the Section 34 limitation period from the date of the original award. The clock starts only once those proceedings conclude.**

SUPREME COURT

Section 16 Jurisdictional Rejections Are Not Interim Awards — No Intermediate Challenge Is Available

MCM Worldwide Pvt. Ltd. v. CIDC | June 2026

Where a tribunal rejects a plea of lack of jurisdiction, Section 16(5) of the Arbitration Act mandates continuation of proceedings. Section 16(6) provides that such rejection can only be challenged under Section 34 after the final award has been passed. The Supreme Court reaffirmed this with particular clarity, closing off a line of argument that had found some traction in lower courts.

The Court was equally direct on a second point: Section 37 allows appeals only where the tribunal accepts a plea of lack of jurisdiction. No appeal lies where such a plea is rejected. A party whose jurisdictional objection is dismissed mid-proceedings has one option, which is to continue, preserve the objection on the record, and raise it at the Section 34 stage after the final award.

The Court also clarified a misreading of Indian Farmers Fertilizer Cooperative Ltd. v. Bhadra Products. That judgment applies only where limitation is decided as a preliminary issue and results in a standalone interim award, which is separately challengeable under Section 34. It does not support a broader right to challenge adverse Section 16 rulings mid-stream.

> **Key Takeaway: A rejected Section 16 plea is not an interim award and cannot be challenged before the final award is passed. Preserve the objection in the record and raise it at the Section 34 stage.**

KERALA HIGH COURT

Corporate Restructuring and Asset Division Are Non-Arbitrable

Purushothaman Thitta v. Pothan Rajan & Anr. | OP(C) No. 2308 of 2025 | 1 June 2026

The Kerala High Court held that disputes involving corporate restructuring and division of company assets fall within the exclusive jurisdiction of the National Company Law Tribunal and are non-arbitrable. The principle is the same one that governs oppression and mismanagement claims: Parliament has vested exclusive jurisdiction in a specialised statutory forum, and that exclusion cannot be displaced by party agreement. A shareholders' or founders' agreement may contain an arbitration clause, but it will not be effective for disputes that belong to the NCLT by statute.

> **Key Takeaway: Arbitration clauses in shareholders' and founders' agreements do not extend to disputes over corporate restructuring or asset division. These remain exclusively before the NCLT regardless of what the parties have agreed.**

BOMBAY HIGH COURT

Patent Illegality Is Not Available Against International Commercial Arbitration Awards

Oil and Natural Gas Corporation Limited v. Sapura Fabrication SDN BHD | June 2026

Justice Sandeep V. Marne dismissed ONGC's Section 34 challenge to a USD 24 million arbitral award in favour of Sapura Fabrication SDN BHD, now VTEB Fabrication SDN BHD, holding that Section 34(2A) expressly excludes patent illegality as a ground for setting aside awards arising from international commercial arbitration. Since Sapura is incorporated in Malaysia, the dispute, arising from a 2015 turnkey contract for the redevelopment of ONGC's Mumbai High South Field, qualified as an international commercial arbitration under Section 2(1)(f), even though the tribunal sat in Mumbai.

The Court held that perversity, the ground ONGC raised by alleging the tribunal ignored key correspondence and meeting minutes, is itself a facet of patent illegality and therefore unavailable in this category of case. The underlying award, passed in May 2024 by a tribunal led by former Chief Justice A.P. Shah, had directed ONGC to pay over USD 24 million in addition to post-award interest and close to Rs 1.88 crore in costs.

> **Key Takeaway: For international commercial arbitrations seated in India, patent illegality and perversity are not available challenge grounds under Section 34. The permissible grounds are materially narrower than for domestic awards.**

LEGISLATIVE UPDATE

ICC 2026 Rules in Force from 1 June 2026 — Key Changes for Indian Parties

The updated ICC Arbitration Rules came into force on 1 June 2026 and apply to all requests for arbitration filed on or after that date. The changes that matter most for Indian parties using ICC clauses are set out below.

Terms of Reference are no longer mandatory.

One of the most notable changes is the removal of the requirement that the tribunal draw up Terms of Reference. They remain available voluntarily but are no longer a required procedural step. This removes a feature that was distinctive to ICC arbitration but which many parties found to be a time-consuming formality in disputes where the issues were already well-defined.

Early determination of manifestly unmeritorious claims.

A new early determination mechanism allows tribunals to dismiss claims or defences that are without legal merit, without a full hearing. For Indian parties facing expansive counterclaims that lack a legal foundation but are designed to increase costs and time, this is the most practically significant addition. A tribunal can now clear unmeritorious claims from the record early, without sitting through weeks of submissions on them.

Emergency arbitrator reform — ex parte preliminary orders now available.

The 2026 Rules introduce ex parte preliminary orders in the Emergency Arbitrator regime, in addition to broadening standing and clarifying the investment-treaty exclusion. The ex parte order means that where advance notice of an EA application would itself defeat the purpose of the relief in an asset dissipation or fund movement scenario, the emergency arbitrator can act before the other side is notified. This mirrors what Indian courts can do under Section 9 on an urgent ex parte basis, and brings the ICC's EA regime functionally in line with that standard.

Highly Expedited Procedure for smaller disputes.

A Highly Expedited Procedure provides for appointment of an arbitrator within days and an award within approximately three months for disputes below a set monetary threshold.

LEGISLATIVE UPDATE

Section 9 vs. Emergency Arbitration: A Practitioner Problem the Draft Bill Has Not Fully Solved

Even if the Draft Arbitration Amendment Bill is enacted and emergency arbitration becomes statutory, the enforcement of an EA order as a court order under the CPC requires execution proceedings. The respondent can resist. The execution court will review whether the EA order fits within the statutory framework. This process alone can take several weeks before the order has teeth.

Vardharma Chambers

New Delhi · Golf Apartments, 11 & 11A, Golf Links, New Delhi 110003

roshni.khirbath@vchambers.in · vchambers.in · LinkedIn

JUNE 2026
DISPUTES DIGEST
EDITION III